

1 *E-filed on* 9/8/06

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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION
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12 IN RE CYGNUS TELECOMMUNICATIONS
13 TECHNOLOGY, LLC, PATENT
LITIGATION

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15 THIS ORDER RELATES TO:
All Actions

No. MDL-1423
This Order Applies to All Actions

C-02-00142 RMW
C-02-00145 RMW
C-02-05437 RMW
C-03-03594 RMW
C-03-03596 RMW
C-03-03378 RMW
C-03-04003 RMW
C-04-03001 RMW
C-04-03365 RMW
C-04-04247 RMW
C-04-04359 RMW
C-06-03843 RMW
C-06-04295 RMW


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21 ORDER RE COST OF PRODUCING
DOCUMENTS IN CYGNUS'S POSSESSION

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23 As noted in this court's July 14, 2006 order, Cygnus's counsel possesses approximately
24 twenty-five boxes of documents from past Cygnus infringement actions which defendants want
25 scanned and placed in the parties' discovery depository. Cygnus objected that it should not have to
26 pay for producing these documents. The court preliminarily approved defendants' suggestion that
27 they be allowed to have these documents scanned at their expense, with the possibility that they at
28 some point in the future be allowed to seek reimbursement of some of this cost from Cygnus.

Defendants' liaison counsel estimated that it would cost \$17,000 to scan the contents of the twenty-five boxes of documents subject to the limitations of the July 14, 2006 order. *See* Report of Liaison Counsel (July 17, 2006). At the August 18, 2006 hearing, the parties informed the court that counsel for defendant AT&T Corporation, Gregory B. Wood, had assumed the responsibility for sorting through these boxes and deciding what should be scanned. The estimate seems reasonable enough for the undertaking as limited by Mr. Wood's sorting. Defendants may therefore scan these documents at their own expense and move for reimbursement from Cygnus at some future date, if appropriate. The court tentatively finds that Cygnus should bear the expense of scanning those documents that is required to disclose pursuant to Fed.R.Civ.P. 26(a)(1).

Also at the August 18, 2006 hearing, counsel for Cygnus reported that another defendant wanted to independently examine the contents of the boxes for itself, although all participating in the hearing agreed to abide by Mr. Wood's decision on what documents should be scanned. No party was identified as objecting to this procedure. If any defendant other than AT&T wishes to examine these boxes, it must obtain court approval before doing so.¹

DATED: 9/8/06


 RONALD M. WHYTE
 United States District Judge

¹ If counsel for the defendants in the newest additions to MDL proceedings before this court (those in cases C-06-03843 RMW and C-06-04295 RMW) object on the basis that they have not agreed to have Mr. Wood examine the documents in these boxes for them, they may apply to the court for permission to review the documents themselves.

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7 Counsel for plaintiff is responsible for ensuring that involved attorneys not on the above service list
8 receive a copy of this order, if necessary, and shall inform the court of any omissions.
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